

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**HELEN HOAI PHAM**  
**803 Calero Avenue**  
**San Jose, CA 95123**

Registered Nurse License No. **656935**

Respondent

Case No. 2012-580

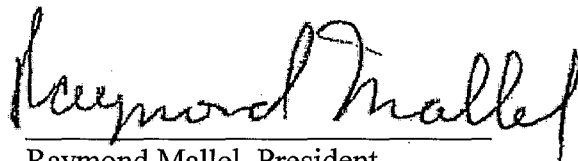
OAH No. 2012040862

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **January 16, 2013**.

IT IS SO ORDERED **December 17, 2012**.



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUDITH J. LOACH  
Deputy Attorney General  
4 State Bar No. 162030  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5604  
6 Facsimile: (415) 703-5480  
E-mail: Judith.Loach@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-580

13 **HELEN HOAI PHAM**  
14 **803 Calero Avenue**  
**San Jose, CA 95123**  
**Registered Nurse License No. 656935**

OAH No. 2012040862

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

Respondent.

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Interim Executive Officer of the  
21 Board of Registered Nursing. She brought this action solely in her official capacity and is  
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
23 Judith J. Loach, Deputy Attorney General.

24 2. Respondent Helen Hoai Pham ("Respondent") is represented in this proceeding by  
25 attorney Paul Chan, Esq., whose address is: Paul Chan, Esq., Law Offices of Paul Chan,  
26 400 Capitol Mall, Suite 2545, Sacramento, CA 95814.

27 3. On or about April 28, 2005, the Board of Registered Nursing issued Registered Nurse  
28 License No. 656935 to Respondent. The Registered Nurse License was in full force and effect at

1 all times relevant to the charges brought in Accusation No. 2012-580 and will expire on June 30,  
2 2014, unless renewed.

### 3 JURISDICTION

4 4. Accusation No. 2012-580 was filed before the Board of Registered Nursing  
5 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The  
6 Accusation and all other statutorily required documents were properly served on Respondent on  
7 March 29, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-580 is attached as Exhibit A and incorporated herein  
9 by reference.

### 10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. 2012-580. Respondent has also carefully read, fully  
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
14 Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to  
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to  
19 compel the attendance of witnesses and the production of documents; the right to reconsideration  
20 and court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
23 every right set forth above.

### 24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation in Accusation  
26 No. 2012-580.

27 10. Respondent agrees that her Registered Nurse License is subject to discipline and she  
28 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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1 distinct condition. If any condition of this Order, or any application thereof, is declared  
2 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other  
3 applications thereof, shall not be affected. Each condition of this Order shall separately be valid  
4 and enforceable to the fullest extent permitted by law.

5       1.       **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full  
6 and detailed account of any and all violations of law shall be reported by Respondent to the Board  
7 in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance  
8 with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees  
9 within 45 days of the effective date of the decision, unless previously submitted as part of the  
10 licensure application process.

11       **Criminal Court Orders:** If Respondent is under criminal court orders, including  
12 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
13 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

14       2.       **Comply with the Board's Probation Program.** Respondent shall fully comply  
15 with the conditions of the Probation Program established by the Board and cooperate with  
16 representatives of the Board in its monitoring and investigation of the Respondent's compliance  
17 with the Board's Probation Program. Respondent shall inform the Board in writing within no  
18 more than 15 days of any address change and shall at all times maintain an active, current license  
19 status with the Board, including during any period of suspension.

20       Upon successful completion of probation, Respondent's license shall be fully restored.

21       3.       **Report in Person.** Respondent, during the period of probation, shall appear in  
22 person at interviews/meetings as directed by the Board or its designated representatives.

23       4.       **Residency, Practice, or Licensure Outside of State.** Periods of residency or  
24 practice as a registered nurse outside of California shall not apply toward a reduction of this  
25 probation time period. Respondent's probation is tolled, if and when she resides outside of  
26 California. Respondent must provide written notice to the Board within 15 days of any change of  
27 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
28 returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

5. **Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. **Employment Approval and Reporting Requirements.** Respondent shall obtain

1 prior approval from the Board before commencing or continuing any employment, paid or  
2 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
3 performance evaluations and other employment related reports as a registered nurse upon request  
4 of the Board.

5 Respondent shall provide a copy of this Decision to her employer and immediate  
6 supervisors prior to commencement of any nursing or other health care related employment.

7 In addition to the above, Respondent shall notify the Board in writing within seventy-two  
8 (72) hours after she obtains any nursing or other health care related employment. Respondent  
9 shall notify the Board in writing within seventy-two (72) hours after she is terminated or  
10 separated, regardless of cause, from any nursing, or other health care related employment with a  
11 full explanation of the circumstances surrounding the termination or separation.

12 8. **Supervision.** Respondent shall obtain prior approval from the Board regarding  
13 Respondent's level of supervision and/or collaboration before commencing or continuing any  
14 employment as a registered nurse, or education and training that includes patient care.

15 Respondent shall practice only under the direct supervision of a registered nurse in good  
16 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods  
17 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are  
18 approved.

19 Respondent's level of supervision and/or collaboration may include, but is not limited to the  
20 following:

21 (a) Maximum - The individual providing supervision and/or collaboration is present in  
22 the patient care area or in any other work setting at all times.

23 (b) Moderate - The individual providing supervision and/or collaboration is in the patient  
24 care unit or in any other work setting at least half the hours Respondent works.

25 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
26 person communication with Respondent at least twice during each shift worked.

27 (d) Home Health Care - If Respondent is approved to work in the home health care  
28 setting, the individual providing supervision and/or collaboration shall have person-to-person

1 communication with Respondent as required by the Board each work day. Respondent shall  
2 maintain telephone or other telecommunication contact with the individual providing supervision  
3 and/or collaboration as required by the Board during each work day. The individual providing  
4 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
5 patients' homes visited by Respondent with or without Respondent present.

6       9.     **Employment Limitations.** Respondent shall not work for a nurse's registry, in  
7 any private duty position as a registered nurse, a temporary nurse placement agency, a traveling  
8 nurse, or for an in-house nursing pool.

9       Respondent shall not work for a licensed home health agency as a visiting nurse unless the  
10 registered nursing supervision and other protections for home visits have been approved by the  
11 Board. Respondent shall not work in any other registered nursing occupation where home visits  
12 are required.

13       Respondent shall not work in any health care setting as a supervisor of registered nurses.  
14 The Board may additionally restrict Respondent from supervising licensed vocational nurses  
15 and/or unlicensed assistive personnel on a case-by-case basis.

16       Respondent shall not work as a faculty member in an approved school of nursing or as an  
17 instructor in a Board approved continuing education program.

18       Respondent shall work only on a regularly assigned, identified and predetermined  
19 worksite(s) and shall not work in a float capacity.

20       If Respondent is working or intends to work in excess of 40 hours per week, the Board may  
21 request documentation to determine whether there should be restrictions on the hours of work.

22       10.    **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll  
23 and successfully complete a course(s) relevant to the practice of registered nursing no later than  
24 six months prior to the end of her probationary term.

25       Respondent shall obtain prior approval from the Board before enrolling in the course(s).  
26 Respondent shall submit to the Board the original transcripts or certificates of completion for the  
27 above required course(s). The Board shall return the original documents to Respondent after  
28 photocopying them for its records.

1           11.     **Cost Recovery.** Respondent shall pay to the Board costs associated with its  
2 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the  
3 amount of \$6,690.00. Respondent shall be permitted to pay these costs in a payment plan  
4 approved by the Board, with payments to be completed no later than three months prior to the end  
5 of the probation term.

6           If Respondent has not complied with this condition during the probationary term, and  
7 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
9 extension of Respondent's probation period up to one year without further hearing in order to  
10 comply with this condition. During the one year extension, all original conditions of probation  
11 will apply.

12           12.     **Violation of Probation.** If Respondent violates the conditions of her probation,  
13 the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay  
14 order and impose the stayed discipline (revocation/suspension) of Respondent's license.

15           If during the period of probation, an accusation or petition to revoke probation has been  
16 filed against Respondent's license or the Attorney General's Office has been requested to prepare  
17 an accusation or petition to revoke probation against Respondent's license, the probationary  
18 period shall automatically be extended and shall not expire until the accusation or petition has  
19 been acted upon by the Board.

20           13.     **License Surrender.** During Respondent's term of probation, if she ceases  
21 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of  
22 probation, Respondent may surrender her license to the Board. The Board reserves the right to  
23 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
24 take any other action deemed appropriate and reasonable under the circumstances, without  
25 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent  
26 will no longer be subject to the conditions of probation.

27           Surrender of Respondent's license shall be considered a disciplinary action and shall  
28 become a part of Respondent's license history with the Board. A registered nurse whose license

has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

14. **Mental Health Examination.** Respondent shall, within 45 days of the effective date of this Decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by Respondent.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Applicant shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified Applicant that a mental health determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.


If Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided.

1 Only one such waiver or extension may be permitted.

2 ACCEPTANCE

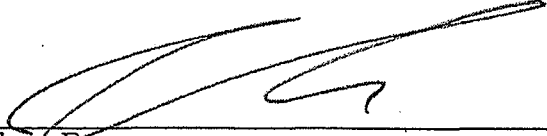
3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
4 discussed it with my attorney, Paul Chan, Esq. I understand the stipulation and the effect it will  
5 have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary  
6 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
7 of the Board of Registered Nursing.

8 DATED: 8/30/12

  
HELEN HOAI PHAM  
Respondent

10 I have read and fully discussed with Respondent Helen Hoai Pham the terms and conditions  
11 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
12 its form and content.

13 DATED: 9/4/12

  
Paul Chan, Esq.  
Attorney for Respondent

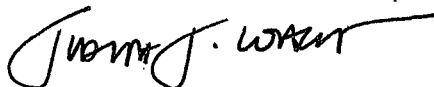
15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
17 submitted for consideration by the Board of Registered Nursing.

19 Dated: 9/5/2012

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General



JUDITH J. LOACH  
Deputy Attorney General  
Attorneys for Complainant

**Exhibit A**

**Accusation No. 2012-580**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUDITH J. LOACH  
Deputy Attorney General  
4 State Bar No. 162030  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5604  
6 Facsimile: (415) 703-5480  
E-mail: Judith.Loach@doj.ca.gov  
7 Attorneys for Complainant

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10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-580

13 **HELEN HOAI PHAM**  
803 Calero Avenue  
San Jose, CA 95123  
14 Registered Nurse License No. 656935

ACCUSATION

15 Respondent.

16  
17  
18 Complainant alleges:

19 PARTIES

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about April 28, 2005, the Board of Registered Nursing issued Registered Nurse  
24 License Number 656935 to Helen Hoai Pham ("Respondent"). The Registered Nurse License  
25 was in full force and effect at all times relevant to the charges brought herein and will expire on  
26 June 30, 2012, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

7. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

8. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

9. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

## COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## DRUGS

11. Methadone is an opiate analgesic used for the treatment of pain and/or for withdrawal symptoms in patient who were addicted to opiate drugs. It is a medication that can cause life-threatening respiratory depression and cardiac arrhythmias in patients who are newly receiving the medication. It is a Schedule II controlled substance pursuant to Health and Safety Code section 11055 (c)(14) and a dangerous drug pursuant to Code section 4022.

12. Lexapro is a medication used to treat depression and other psychiatric disorders. It is classified as a dangerous drug pursuant to Code section 4022.

13. Desipramine is a medication used for the treatment of depression and for substance abuse disorders. Symptoms of an overdose include hallucinations and an altered level of consciousness. It is classified as a dangerous drug pursuant to Code section 4022.

14. Zestril is the brand name for Lisinopril, a medication used alone or in combination with other medications to treat high blood pressure. It is classified as a dangerous drug pursuant to Code section 4022.

## STATEMENT OF FACTS

15. At all relevant times, Respondent was employed as a registered nurse at Washington Hospital, Fremont, California. On August 15, 2009, Respondent assumed care of Patient A, an 87 year-old female admitted to Washington Hospital with diagnoses of heart failure, high blood pressure, dementia and shortness of breath. Patient A did not have any complaints of pain, depression or history of substance abuse.

16. Respondent assumed care of Patient A on August 15, 2009, the day of her admission. Medications ordered by Patient A's physician were appropriately administered. Respondent cared for Patient A on August 16, 2009, and administered the medications as ordered by her physician.

17. On the morning of August 17, 2009, at 8:15 a.m. Respondent administered the following medications to Patient A: Methadone 30 milligrams; Lisinopril 10 milligrams, Desipramine 160 milligrams and Lexapro 20 milligrams. None of these medications had been

1 ordered by Patient A's physician. Prior to administering these medications, Respondent failed to  
2 confirm that these medications were ordered by Patient A's physician.

3 18. At 11:00 a.m., Respondent documented that Patient A was having hallucinations and  
4 was anxious and restless. Subsequently, Patient A was transferred to the Intensive Care Unit for  
5 low blood pressure and an altered level of consciousness. She expired on August 19, 2009, with  
6 the cause of death related to multiple drug intoxication.

7 FIRST CAUSE FOR DISCIPLINE

8 (Gross Negligence – Administration of Incorrect Medications)

9 19. Respondent is subject to disciplinary action under Code section 2761(a)(1), for gross  
10 negligence as defined by the California Code of Regulations, Title 16, section 1442, in that on  
11 August 17, 2009, she failed to verify the medications ordered for Patient A and administered  
12 medications to Patient A that had been ordered for another patient. The facts in support of this  
13 cause for discipline are set forth above in paragraphs 15 through 18.

14 SECOND CAUSE FOR DISCIPLINE

15 (Incompetence – Failure to Assess Patient)

16 20. Respondent is subject to disciplinary action under Code section 2761(a)(1) for  
17 incompetence as defined by California Code of Regulations, Title 16, sections 1443 and 1443.5,  
18 in that she failed to observe that the medications she was administering to Patient A were not  
19 appropriate given her medical history, age and admitting condition. The facts in support of this  
20 cause for discipline are set forth above in paragraphs 15 through 18.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 656935, issued to Helen  
25 Hoai Pham;

26 2. Ordering Helen Hoai Pham to pay the Board of Registered Nursing the reasonable  
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
28 Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED:

March 29, 2012 Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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